

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1414 OF 2000

1. Mrs.Valsala Viswanathan
2. Mrs.Alphonsa Johnson. Petitioners

Versus

1. State of Maharashtra
through the Director of Education,
Central Buildings, Pune.
2. ICL Education Society.
3. ICLES' Mon Ami High School
(Secondary) Marathi/English
Media. Respondents

Mr.M.M. Vashi for petitioners.

Mr.V.L. Desai for respondent Nos.2 and 3.

Assistant Government Pleader for res.No.1.

CORAM : H.L. GOKHALE &
S.P. KUKDAY, JJ.

DATE :21st June 2005

ORAL JUDGMENT : (Per H.L. Gokhale, J.)

1. Heard the learned Counsel for the parties.
2. The two petitioners in this petition are qualified teachers working in respondent No.3-school in English Medium Section. The said school is run by respondent No.2-Management. The 1st petitioner joined in July 1989 and has been working continuously since then. The 2nd petitioner joined in June 1986. The grievance of

both the petitioners is that although there is an order of a Division Bench in their favour passed on 9th September 1997 in Writ Petition No.1344 of 1994, the said judgment is not being implemented correctly. They have been denied the arrears of salary based on that judgment as also the correct scales. Although the petition has been filed by the present two petitioners, the 2nd petitioner is not pressing the petition.

3. It is pointed out in the petition that the above-referred petition came up for consideration before a Division Bench on 9th September 1997 and the grievance made in that petition was accepted by the High Court. Principally, the grievance was that the teachers were not being paid as per the scales prescribed by the Government, although they were covered under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. The Division Bench directed the 2nd respondent-Management to pay the teachers of its schools the salaries as prescribed for them by the Government which is included in Annexure-C to the M.E.P.S. Rules.

4. This Writ Petition No.1344 of 1994 was decided by a common judgment along with Writ

Petition No.778 of 1993 which was against another school. The Management of that school challenged this common judgment and a Special Leave Petition filed against that judgment came to be dismissed.

5. The petitioners followed up this judgment by pointing out to the School Management that they were not being paid the arrears as well as the correct salary. The School Management wrote back on 7th March 1998 stating that the arrears were being worked out, but the Management took the stand that the petitioners are entitled from 1991 and not from 1986. This was stated to be allegedly on the basis of law of limitation. The learned Advocate for the petitioners pointed out to the Management by the letter dated 2nd November 1999 that the salary is being denied and the arrears are not being cleared. The 2nd respondent-Management took the stand that the amount due to the 1st petitioner was only Rs.54,708/- calculated from 1991 on this alleged basis of limitation. It is, however, material to note that this submission was not pressed when the earlier petition was decided. The petitioners, in the circumstances, wrote to the Director of Education on 2nd November 1999 pointing out that the amounts were not being cleared as per the High

Court judgment. The Deputy Director, however, did not respond favourably. In the circumstances, this petition has been filed.

6. An affidavit-in-reply has been filed by the School Management and a reference is made to a letter dated 17th February 1998 said to be written by the Education Department. In Para-3 of the reply, it is stated that it is on that basis that the calculations are made. That letter is, however, not produced before the Court. It is, therefore, stated that initially an amount of Rs.49,704/- was paid. Two more cheques were given in view of the interim order passed in the present petition on 18th April 2000. The total amount paid is Rs.71,153/- (net) after dedcuting taxes. The reply, as stated above, is that the payments are made as per the directions given by the Deputy Director of Education and are in fact in excess and the salary was fixed initially as per the 4th Pay Commission and from 1st June 2000 as per the 5th Pay Commission.

7. Mr.Desai, learned Counsel appearing for respondent Nos.2 and 3, submitted that the alleged difference in the pay is because of years of service that the petitioners had put in.

8.In our view, as suggested by Mr.Vashi the issue

can be better resolved by directing the Dy. Director of Education to decide this question of arrears of salary, which we direct him to decide

after giving an opportunity to both the parties. Arrears will be calculated on the basis of the 5th Pay Commission right from the period it became applicable i.e. from 1st January 1996 and as per the earlier referred judgment rendered by the High Court. Similarly the Deputy Director will also decide what should be the correct scale of pay to the 1st petitioner. That will be on the basis of the continuous date of officiation and the service record of the 1st petitioner.

9. The petition stands disposed of. No order as to costs.

(H.L. GOKHALE, J.)

(S.P. KUKDAY, J.)